IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

LABORERS' PENSION FUND and FILED: AUGUST 28, 2008 LABORERS' WELFARE FUND OF THE 08CV4933 HEALTH AND WELFARE DEPARTMENT OF THE CONSTRUCTION AND GENERAL JUDGE PALLMEYER LABORERS' DISTRICT COUNCIL OF MAGISTRATE JUDGE BROWN CHICAGO AND VICINITY, and JAMES S. JORGENSEN, Administrator of the Funds, ΑO Plaintiffs, Case No. v. DOUG & STEVE CONSTRUCTION, INC., Defendant.

COMPLAINT

Plaintiffs Laborers' Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (the "Funds"), and plaintiff James S. Jorgensen ("Jorgensen"), Administrator of the Funds, by their undersigned attorneys, and for their Complaint against Defendant Doug & Steve Construction, Inc.:

COUNT I

(Failure To Pay Employee Benefit Contributions)

- 1. Jurisdiction is based on Sections 502(e)(1) and (2) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1132(e)(1) and (2); Section 301(a) of the Labor Management Relations Act ("LMRA") of 1947 as amended, 29 U.S.C. §185(a); and 28 U.S.C. §1331.
- 2. Venue is proper pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2), and 28 U.S.C. §1391(a) and (b).
- 3. The Funds are multiemployer benefit plans within the meaning of Sections 3(3) and 3(37) of ERISA. 29 U.S.C. §1002(3) and 37(A). The Funds have offices, conduct business and administer the plans within this District. Jorgensen is the Administrator of the Funds, and has been duly authorized by the Funds' Trustees to act on behalf of the Funds in the collection of employer contributions owed to the Funds and to the Construction and General Laborers' District Council of Chicago and Vicinity Training Fund, and with respect to the collection by the Funds of amounts

which have been or are required to be withheld from the wages of employees in payment of Union dues for transmittal to the Construction and General Laborers' District Council of Chicago (the "Union"). With respect to such matters, Jorgensen is a fiduciary of the Funds within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A).

- Defendant Doug & Steve Construction, Inc. (hereinafter "the Company"), is a 4. corporation in good standing according to the Indiana Secretary of State. The Company does business within this District and is an Employer within the meaning of Section 3(5) of ERISA, 29 U.S.C. §1002(5), and Section 301(a) of LMRA, 29 U.S.C. §185(a).
- The Union is a labor organization within the meaning of 29 U.S.C. §185(a). The 5. Union and the Company are parties to a collective bargaining agreement ("Agreement"). A copy of the "short form" Agreement entered into between the Union and the Company, which Agreement adopts and incorporates a Master Agreement between the Union and various employer associations, and also binds the Company to the Funds' respective Agreements and Declarations of Trust, is attached hereto as Exhibit A.
- The Funds have been duly authorized by the Construction and General Laborers' 6. District Council of Chicago and Vicinity Training Fund (the "Training Fund"), the Midwest Construction Industry Advancement Fund ("MCIAF"), the Chicagoland Construction Safety Council (the Safety Fund"), the Laborers' Employers' Cooperation & Education Trust ("LECET"), the Contractors' Association of Will and Grundy Counties (the "Will County Fund"), the Concrete Contractors' Association of Greater Chicago ("CCA"), and the CDCNI/CAWCC Conttractors' Industry Advancement Fund (the "Wall & Ceiling Fund"), to act as an agent in the collection of contributions due to those funds.
- The Agreement obligates the Company to make contributions on behalf of its 7. employees covered by the Agreement for pension benefits, health and welfare benefits, for the training fund and to submit monthly remittance reports in which the Company, inter alia, identifies the employees covered under the Agreement and the amount of contributions to the Funds remitted on behalf of each covered employee.

- The Agreement further obligates the Company to procure, carry and maintain a surety - 8. bond to guarantee payment of wages, Pension and Welfare contributions for the duration of the Agreement.
- Pursuant to Section 502(g)(2) of ERISA, 29 U.S.C. §1132(g)(2), and the terms of the 9. Funds' Trust Agreements, the Company is liable to the Funds for unpaid contributions and related amounts, as well as interest and liquidated damages on the unpaid contributions, reasonable attorneys' fees and costs, and such other legal and equitable relief as the Court deems appropriate.
 - 10. Notwithstanding the obligations imposed by the Agreement, the Company has:
- failed to report contributions owed to plaintiff Laborers' Pension Fund for July 2008 (a) through the present, and failed to pay contributions to said Fund for April 2004 through December 2007, as identified in the audit report attached as Exhibit B, thereby depriving the Laborers' Pension Fund of contributions, income and information needed to administer the Fund and jeopardizing the pension benefits of the participants and beneficiaries;
- failed to report all contributions owed to Plaintiff Welfare Fund of the Health and (b) Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity for July 2008 through the present, and failed to pay contributions to said Fund for April 2004 through December 2007, as identified in the audit report attached as Exhibit B, thereby depriving the Welfare Fund of contributions, income and information needed to administer the Fund and jeopardizing the health and welfare benefits of the participants and beneficiaries;
- failed to report contributions owed to Laborers' Training Fund for July 2008 through (c) the present, and failed to pay contributions to said Fund for April 2004 through December 2007, as identified in the audit report attached as Exhibit B, thereby depriving the Laborers' Training Fund of contributions, income and information needed to administer the Fund and jeopardizing the training fund benefits of the participants and beneficiaries; and
- failed to pay interest and liquidated damages owed, pursuant to Section 502(g)(2) of (d) ERISA, 29 U.S.C. §1132(g)(2), and the terms of the Funds' Trust Agreements, for late payments from certain months during the period of June 2007 through March 2008.
 - Despite demand duly made, the Company has not paid the required contributions or 11.

other sums due.

- All conditions precedent to requiring contributions and reports to the Funds have 12. been met.
- The Company's actions in failing to make timely reports and contributions violate 13. Section 515 of ERISA, 29 U.S.C. §1145, and Section 301 of the LMRA. 29 U.S.C. §185.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against defendant Doug & Steve Construction, Inc. for the amounts of contributions owed to date, together with all accrued delinquencies after suit, interest, liquidated damages, attorneys' fees and costs, and an order directing Defendant to timely submit reports and upon demand by Plaintiffs submit to an audit, and any other legal and equitable relief as the Court deems appropriate.

COUNT II

(Failure To Pay Union Dues)

- 14. Plaintiff realleges paragraphs 1 through 8 of Count I.
- 15. Pursuant to the Agreement, the Funds have been duly designated to serve as collection agents for the Union in that the Funds have been given the authority to collect from employers union dues which have been deducted from the wages of covered employees.
- 16. Notwithstanding the obligations imposed by the Agreement, the Company has failed to withhold and/or to report to and forward the union dues deducted or the Union dues that should have been deducted from the wages of employees for the period from April 2004 to December 2007. as identified in the audit report attached as Exhibit B, thereby depriving the Union of income.
- 17. Pursuant to the Agreement, the Company is liable to the Fund for the unpaid union dues, as well as reasonable attorneys' fees, as the Union's collection agent, and costs, and such other legal and equitable relief as the Court deems appropriate.
- The Company's actions have violated and are violating Section 301(a) of the LMRA, 18. 29 U.S.C. § 185(a).

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment against defendants Doug & Steve Construction, Inc. for the amount of the union dues owed to date together with all attorneys' fees and costs, and any other legal and equitable relief as the Court deems appropriate.

By:_

Attorneys for Plaintiff

Wesley Kennedy Karen I. Engelhardt Angie Cowan Josiah A. Groff ALLISON, SLUTSKY & KENNEDY, P.C. 230 West Monroe Street Suite 2600 Chicago, Illinois 60606 (312) 364-9400

Augušt 28, 2008



Construction & General Laborers' District Council of Chicago and Vicinity

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TRUST FUND

DOUG & STEVE CONSTR., INC. CASE # CHLAB-1207-1592 ACCOUNT # 21085 APRIL 1, 2004 THROUGH DECEMBER 31, 2007 NO SOCIAL SECURITY NUMBERS

Levinson Simon & Sprung, P.C.

Certified Public Accountants

March 31, 2008

566 W. Lake St. Suite 3 West Chicago, IL 60661-1414 (312) 655-0037 Fax (312) 655-9145

Trustees Laborers' Pension Fund and Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity Jean Mashos, Director 11465 Cermak Road Westchester, Illinois 60154

Re:

Doug & Steve Constr., Inc. Case # CHLAB-1207-1592 Acct # 21085

Gentlemen:

In accordance with your instructions we have performed certain agreed upon procedures to the payroll records presented for our inspection by the above mentioned employer. The purpose of the inspection was to determine the accuracy of the employer's monthly contributions to the Laborers' Pension Fund and Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity for the period April 1, 2004 through December 31, 2007. This agreed upon procedure engagement was performed in accordance with the standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the Laborers' Pension Fund and Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity. The accuracy of the payroll records and reporting to the Funds is the responsibility of the management of Doug & Steve Constr., Inc. We have applied the prescribed procedures to those records and reports.

Attached hereto are yearly schedules showing the detail of the under-reported hours and computation of the amounts due to the Funds. The findings consist of under-reported wages and hours of individuals on payroll doing covered work that have been previously reported to the Funds. Separate schedules and summaries have been prepared according to the funds due.

Our examinations indicated that the employer owes the following amounts for the period audited, exclusive of interest.

		Amount Due
Welfare Fund	•	\$ 2,720.53
Pension Fund		1,700.27
Training Fund		76.31
IAF	\n_1	19.92
LDCLMCC		34.14
LECET		17.07
Dues		158.28
Total		\$ 4,726.52

Trustees Laborers' Pension Fund and Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity March 31, 2008 Page Two Case # CHLAB-1207-1592

We were not engaged to, and did not, perform an examination, the objective of which would be the expression of an opinion on the accompanying report. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We shall be pleased to furnish any additional information desired and have attached our bill for services.

Very truly yours,

LEVINSON SIMON & SPRUNG P.C. Howard B. Levinson, CPA, MBA

HBL/lab

Enclosures

cc: Denise Ayala

Manager: Betar, Leia Auditor: Betar, Leia

Reconciliation of Differences Per Year Levinson Simon & Sprung, P.C.

PENSION AND WELFARE FUNDS OF CHICAGO LABORERS DOUG & STEVE CONSTR. INC.

Audit Period: 4/1/2004 thru 12/31/2007 Fiscal Year End: May Case #: ChLab-1207-1592

ALL FUNDS

٠	Fiscal Year Ending	MAY 2007	MAY 2006	MAY 2005	MAY 2004	Total
	Dollars Not Reported	0.00	788.40	6,510.55	1,745.56	9.044.51
	Hours Not Reported	0.00	5.50	237.00	42.00	284,50
Dollar	Dollar Amount Due					
	Welfare Fund	0.00	37.73	1,495.47	175.14	1,708.34
	Pension Fund	0.00	21.67	815.28	141.96	978.91
	Training Fund	0.00	0.94	40.29	7.14	48.37
	IAF	0.00	0.39	16.59	2.94	19.92
	LDCLMCC	0.00	0.66	28.44	5.04	34.14
	LECET	0.00	0.33	14.22	2.52	17.07
	Dues	0.00	13.80	113.93	30.55	158.28
	Total	0.00	75.51	2,524.22	365.29	2,965.02
		*		Liquic	Liquidated Damages	4,833.47
	. ,				Dues Penalties	36.80
					Audit Fee	1,051.40

Total Amount Due

8,886.68

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Docume <u>a</u> LECET LDCLMCC

\$0.0600

334.74

334.7

5.04 2.94

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2.52

141.96 175.14

141.96 175.14

7.14

42.00 16.00 14,50

42.00 16.00 14.50 6.00

6.00 5.50

Total

\$0.1200

\$0.0700

\$3,3800 \$0,1700 \$4.1700

08/28/2008
Rate Table
OWelfare Fund
Pension Fund
Training Fund

SSN Name

Axxxx-xx-1374 AVILA, JOSE

CHAVEZ, MANUEL xxxx-xx-0165 NOAK, ALBERT xxxx-xx-2157 KUSTRIC, OMAR

Total Hours

JUN 2003

JUL 2003

AUG 2003 | SEP 2003

OCT 2003 | NOV 2003 | DEC 2003 | JAN 2004 | FEB 2004 | MAR 2004 | APR 2004 | MAY 2004

Contributions computed by Amount per Hour

Contract: CCA & *CCA Case #: ChLab-1207-1592

PENSION AND WELFARE FUNDS OF CHICAGO LABORERS DOUG & STEVE CONSTR. INC.

Year Ended: May, 2004

Report Date: 3/31/2008

Detail Report

Levinson Simon & Sprung, P.C.

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Report Date: 3/31/2008

PENSION AND WELFARE FUNDS OF CHICAGO LABORERS
DOUG & STEVE CONSTR. INC.
Case #: ChLab-1207-1592 Year Ended: May, 2004

Year Ended: May, 2004

Contract: CCA & *CCA

Levinson Simon & Sprung, P.C. Detail Report

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Employees Page 3

Report Date: 3/31/2008 Detail Report

> Employees Page 4

Total

Levinson Simon & Sprung, P.C.

DOUG & STEVE CONSTR. INC.

Contract: CCA & CCA Case #: ChLab-1207-1592

Year Ended: May, 2005

PENSION AND WELFARE FUNDS OF CHICAGO LABORERS

Contributions computed by Amount per Hour

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SSN	Name	JUN 2004	JUL 2004	AUG 2004	SEP 2004	OCT 2004 NOV 2004		DEC 2004	JAN 2005	FEB 2005	MAR 2005	APR 2005	MAY 2005	
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xxx-xx-3346	xxx-xx-3346 TORRES, JUAN	46.00												1
	Total Hours	170.50		30.50				30.50				5.50		
		÷						÷ .						
Welfare Fund	\$6.3100	1,075.86		192.46				192.46				34.71	-	
ension Fund	\$3,4400	586.52		104.92				104.92			, J	18.92		
Training Fund	\$0.1700	28.99		5.19				5,19				.94		
AF	\$0.0700	11.94		2.14				2.14				.39		
LDCLMCC	\$0.1200	20.46		3.66			-	3.66				.66	-	
LECET	\$0.0600	10.23		1.83				1.83				.33		
Total		1,733.99		310.19				310.19			•	55.94		

1,495.47

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PENSION AND WELFARE FUNDS OF CHICAGO LABORERS DOUG & STEVE CONSTR. INC. Contract: CCA & *CCA Case #: ChLab-1207-1592 Year Ended: May, 2005

Contributions computed as Percentage of Dollars Paid

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Employees

Levinson Simon & Sprung, P.C.

Report Date: 3/31/2008 Detail Report

Document 1

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of SSN Name

5 Name

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10 Nam PENSION AND WELFARE FUNDS OF CHICAGO LABORERS DOUG & STEVE CONSTR. INC. Contract: CCA & *CCA Case #: ChLab-1207-1592

Year Ended: May, 2006

Report Date: 3/31/2008

Levinson Simon & Sprung, P.C.

Detail Report

Contributions computed by Amount per Hour

OCT 2005

NOV 2005

DEC 2005

JAN 2006

FEB 2006

MAY 2006

Total

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Total	LECET	LDCLMCC	IAF	Training Fund	Pension Fund	Welfare Fund	Rate Table		XXXX-XX-3346	XXXX-XX-1518	
	\$0.	\$0.	\$0.					Total Hours	TORRES, JUA	S XXXX-XX-1518 MUNOZ, DONOVAN	
	\$0.0600	\$0,1200	\$0.0700	\$0,1700	\$3.9400	\$6.8600			Ź	OVAN	
56.10	.30	.60	.35	.85	19.70	34.30		5.00	50	4.50	
5.61	.03	.06	.04	.09	1.97	3.43		.50			
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Employees

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Document 1

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1.7500%

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AXXX--XX-1374 AVILA, JOSE

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Total P-"

Total Dollars Paid

JUN 2005

JUL 2005

AUG 2005 788.40 788.40

PENSION AND WELFARE FUNDS OF CHICAGO LABORERS
DOUG & STEVE CONSTR. INC.
Case #: ChLab-1207-1592 Year Ended: May, 200

Year Ended: May, 2006

Contract: CCA & *CCA

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Total

788,40 788.40

13.80 13.80 Page 7 Employees

Reconciliation of Differences Per Year Levinson Simon & Sprung, P.C.

PENSION AND WELFARE FUNDS OF CHICAGO LABORERS DOUG & STEVE CONSTR. INC.
Case #: ChLab-1207-1592
Audit Period: 4/1/2004 thru 12/31/2007
Fiscal Year End: May

ALL FUNDS EXCEPT DUES, LDCLMCC, LECET AND CCA

1,761.49	Total Amount Due	Manager: Betar, Leia Auditor: Betar, Leia
1,761.49	1,761.49	Total
27.94	27.94	Training Fund
721.36	721.36	Pension Fund
1,012.19	1,012.19	Welfare Fund
•		Dollar Amount Due
127.00	127.00	Hours Not Reported
Total	MAY 2008	Fiscal Year Ending

Filed OF 25 SC CE

Levinson Simon & Sprung, P.C. Detail Report

Report Date: 3/31/2008

PENSION AND WELFARE FUNDS OF CHICAGO LABORERS
DOUG & STEVE CONSTR. INC.
Case # ChLab-1207-1592 Year Ended: May, 2007

Year Ended: May, 2008

Contract: CCA & *CCA

Page 9

Others/Unknown

Contributions c
omputed by
Amount per
Hour

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